Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	CC Docket No. 98-121

To: The Commission

BELLSOUTH'S OPPOSITION TO PETITIONS OF AT&T AND SPRINT FOR RECONSIDERATION AND CLARIFICATION

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EXECUTIVE SUMMARY

AT&T and Sprint seek to tear up the Commission's roadmap for "getting to yes" in section 271 proceedings. Whereas BellSouth sought through its own Petition for Reconsideration and Clarification to move the section 271 process forward, AT&T and Sprint seek to move it backward. They attempt to throw up new procedural obstacles to interLATA relief that have nothing to do with opening local markets or promoting long distance competition. They dispute the Eighth Circuit's decision that local pricing matters are reserved to the states, which this Commission properly accepted as binding pending Supreme Court review. And they put forward proposals intended only to give themselves, as major incumbent interexchange carriers, an improper competitive advantage over new BOC entrants. Each of these tactics to delay competition should be rejected.

Sprint's effort to overturn the Order's holding that a BOC need not reargue settled issues in successive section 271 applications is illustrative of the petitions as a whole. In the guise of seeking "clarification," Sprint effectively seeks repeal of this sensible stare decisis rule. That Sprint thinks it is necessary to seek reversal clandestinely through "clarification" requests, illustrates the absence of any basis for the requests, other than maintaining every possible obstacle to section 271 relief.

Likewise, AT&T rehashes its old argument that CLECs can block interLATA competition by refusing to include checklist items in their interconnection agreements, a position this Commission already has rejected as contrary to the language and the spirit of the 1996 Act.

Both AT&T and Sprint also continue to urge this Commission to encroach on areas that are reserved to the Louisiana PSC. Sprint seeks to have this Commission reconsider its

agreement with the Louisiana PSC that BellSouth is not required to allow commingling of local and intraLATA toll traffic over the same interconnection trunks. The Commission correctly deferred to the Louisiana PSC's conclusion, especially in the face of Sprint's failure to offer any evidence that would call the state commission's determination into doubt. For its part, AT&T advocates that the Commission invoke as its own the power to allocate intrastate access charges, despite the Eighth Circuit's unambiguous holding that the Commission does not have this power.

Sprint continues to object to BellSouth's terms for resale of contract service arrangements. As the Commission has recognized, however, requiring Sprint to resell CSA discounts with the same volume and other commitments imposed on BellSouth's retail customers is reasonable and nondiscriminatory.

Finally, AT&T and Sprint once again ask the Commission to expand the requirements of section 272 beyond those set out in the statute and Commission rules, and to challenge the express joint marketing authorization of section 272(g). These attempts to rewrite section 272 have already been considered and rejected by the Commission, and the Commission should reject them again.

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BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively "BellSouth") hereby oppose the petitions for reconsideration and clarification filed by AT&T and Sprint. Whereas the Commission characterized its Order as a sign of "significant progress,"[1] AT&T and Sprint want the Commission to take a significant step in the wrong direction. Their arguments find no support in the 1996 Act or the governing judicial and regulatory decisions. Perhaps even more important, the AT&T and Sprint petitions are fundamentally contrary to Congress's overriding goal of opening telecommunications markets. See Order ¶¶ 2-3 (discussing 1996 Act). This Commission should reject the petitions as what they are – efforts to advance the incumbent carriers' self-interest at the expense of both the law and the public interest.

[1] Memorandum Opinion and Order, Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Louisiana, CC Docket No. 98-121, FCC 98-271, ¶ 4 (rel. Oct. 13, 1998) ("Order").

DISCUSSION

I. THE COMMISSION SHOULD REJECT SPRINT'S INDIRECT REQUESTS TO VACATE THE STREAMLINED BRIEFING PROCEDURES FOR PREVIOUSLY SATISFIED CHECKLIST ITEMS

The interexchange carriers' motives are nakedly revealed by Sprint's arguments for repetitive briefing of checklist issues that already have been resolved in a BOC's favor for the same state. Sprint Petn. at 2-5; see Order ¶ 58. Sprint seeks through its "clarification" request to gut the Commission's common-sense stare decisis procedures, in the hope of making the process of securing interLATA relief more difficult for the BOC.

First, in a facially silly request, Sprint purports to seek clarification that the burden of proof is on the BOC applicant. Sprint Petn. at 3. Since the Commission said as much, Order ¶¶ 51, 53, 59, Sprint must hope for "clarifying" language that will somehow reverse or limit the Commission's determination that a BOC may rely upon a previously successful showing regarding the same checklist item to make its prima facie case. See id. ¶¶ 53, 58 & n.151. The Commission should not entertain Sprint's gambit.

Second, Sprint seeks "clarification" that the BOC's certification that facts have not changed actually requires a whole new round of briefing and evidence. Sprint Petn. at 3. Sprint would force the BOC to submit all evidence relevant to the checklist item – whether old or new – in a successive application. Id. at 3-4. By allowing the BOC to "incorporate by reference its previous showing," Order ¶ 58 & n.151, however, the Commission sought to ease the procedural burden of section 271 proceedings and "make the section 271 application process as orderly and predictable as possible." Id. ¶ 4. Sprint's proposal would prevent fulfillment of either objective and, indeed, require the BOC to argue previously satisfied checklist items from scratch.

Whenever the streamlined procedures are used, the opponents will have had a full opportunity to present their evidence during the prior proceeding, when the Commission found the BOC in compliance. And the opponents may put in any new evidence they have to disprove the BOC's certification of continued compliance. Order ¶ 58. To use Sprint's example, an opponent could submit new performance measure data from the cache that BellSouth makes available to CLECs, if it believed that new data rebutted BellSouth's prima facie case. Thus, Sprint's proposal for repetitive briefing serves no purpose other than complicating section 271 proceedings.

Third, Sprint seeks a clarification that "any relevant chang[e] in law" prevents a BOC from using the streamlined filing procedure contemplated by the Order. Sprint Petn. at 4. Under paragraph 58 of the Order, opponents of an application are free to argue that changes in law constitute "new information that BellSouth fails to satisfy [previously satisfied] checklist items." But that does not mean that any change in law trumps a prior finding of compliance. The new law would have to prevent a finding of compliance based on the evidence and argument provided and/or incorporated by reference in BellSouth's application and reply. Sprint's proposed rule that changes in law necessarily moot prior findings of compliance with a checklist item is illogical and, like Sprint's other proposals, would serve no purpose other than mandating repetitive re-argument of settled issues. Also like Sprint's other proposals, it should be rejected.

II. A BOC'S LEGALLY BINDING OBLIGATION TO PROVIDE A CHECKLIST ITEM MAY BE FOUND IN A STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS

Following Sprint's lead in seeking to erect procedural hurdles that serve no legitimate purpose, AT&T returns to an issue settled by the Michigan Order.[2] AT&T argues that, for every aspect of every checklist item, the BOC must show "full implementation of commitments contained in interconnection agreements." AT&T Petn. at 16. Here, AT&T is reviving its old argument that CLECs wield veto power over BOC interLATA entry: they can foreclose entry under Track B by making a request for interconnection,[3] but then foreclose entry under Track A by refusing either to include a particular checklist item in their agreement or to implement contract provisions relating to that checklist item. The Commission has rejected AT&T's absurd construction of the law. As it stated in the Michigan Order, "[r]equiring a BOC petitioning for entry under Track A actually to furnish each checklist item would make BOC entry contingent on competing LECs' decisions about when to purchase checklist items and would provide competing carriers with an opportunity to delay BOC entry," contrary to congressional intent. Michigan Order, 12 FCC Rcd at 2062-03 ¶ 111 & n.252. Indeed, Congress specifically anticipated that BOCs would not have to wait for CLECs to negotiate for checklist items before they could satisfy

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[2] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20543 (1997) ("Michigan Order").

[3] Memorandum Opinion and Order, Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd 539, 571-77 ¶¶ 59-67 (1997) ("South Carolina Order") (finding that mere requests for interconnection foreclosed Track B), appeal pending sub nom. BellSouth Corp. v. FCC, No. 98-1019 (argued Sept. 25, 1998).

Track A.[4] The Commission also has explained that AT&T's reading "is inconsistent with the statutory scheme" in a second way, because it could create an incentive for potential local exchange competitors to limit their local entry, "in order to delay BOC entry into the in-region, interLATA services market." Michigan Order, 12 FCC Rcd at 20602-03 ¶ 111. AT&T offers no basis for revisiting any of these prior Commission determinations.

AT&T next tries to rewrite past decisions by suggesting that where a Track A application relies upon CLECs' legal entitlement to opt into a Statement of Generally Available Terms and Conditions ("SGAT"), the BOC must offer those CLECs "pick and choose" rights. AT&T Petn. at 16. BellSouth does offer CLECs (including CLECs that already have approved interconnection agreements) the ability to opt into distinct portions of its Louisiana SGAT. See Varner Aff. ¶ 18 (App. A, Tab 25). But AT&T's effort to force BOCs to make such offers is contrary to the Eighth Circuit's holding in Iowa Utilities Bd., which made clear that it would violate the structure and objectives of the 1996 Act to allow CLECs to negotiate one set of terms, then assemble a more favorable agreement by choosing isolated terms from other agreements, without taking all the other terms that were part of the bargain underlying the second contract. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 800-01 (8th Cir. 1997), cert. granted sub nom. AT&T Corp. v. FCC, 118 S. Ct. 879 (argued Oct. 13, 1998). The governing principle of respect for voluntarily negotiated interconnection agreements applies to incorporation of SGAT terms, just as much as terms from other agreements.

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[4] See 142 Cong. Rec. E261, E262 (daily ed. Feb. 29, 1996) (statement of Rep. Paxon) (where a "competitor [does] not want every [checklist] item" "the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by section 271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested").

AT&T is simply wrong to say that SGATs do not afford CLECs the same protection as interconnection agreements. AT&T Petn. at 16-17. Most interconnection agreements are voluntarily negotiated, so that the scope of the state commission's review is very limited. See 47 U.S.C. § 252(e)(2) (allowing rejection of negotiated agreement only for discrimination against third parties or inconsistency with public interest). By contrast, state commissions have broad powers of review over SGATs; indeed, they may not approve an SGAT unless it is consistent with sections 251 and 252(d). Id. § 252(f)(2).

Nor, finally, is there any textual basis for AT&T's argument that SGAT's cannot be relevant to a Track A application. A BOC need only show that it is "provid[ing]" "access and interconnection" that "fully implement[s]" the competitive checklist. Id. § 271(d)(3)(A). As the Commission has held, a BOC "provides" a checklist item to a qualifying Track A competitor when the BOC has a concrete and specific legal obligation to furnish the item upon request, and is able to furnish the item in reasonable quantities and at an acceptable level of quality. Order ¶ 54; Michigan Order, 12 FCC Rcd at 20600-05 ¶¶ 107-115. A legal obligation to furnish a checklist item is just as binding on the BOC when it is found in an effective SGAT, as when it is found in a carrier-specific agreement. Likewise, the checklist requirements are "fully implemented" regardless of whether the CLEC obtains its rights directly under the express terms of its interconnection agreement or indirectly by drawing on some other source such as an SGAT or another carrier's state-approved agreement.

In short, AT&T seeks to establish a requirement that would allow the CLECs, rather than the BOCs, to determine the timing of interLATA relief under section 271. That approach was rejected by Congress; it has been rejected by the Commission; and it should be rejected once more.

III. BELLSOUTH'S INABILITY TO IDENTIFY DIFFERENT KINDS OF TRAFFIC EXCHANGED OVER THE SAME INTERCONNECTION TRUNKS IS NOT DISCRIMINATORY

Like the Louisiana PSC, this Commission rejected Sprint's argument that BellSouth must allow CLECs to combine local and intraLATA toll traffic over the same interconnection trunks. Order ¶ 79. Sprint seeks reconsideration of this decision, but offers nothing new to support its twice-rejected position.

The Louisiana PSC determined during its Sprint/BellSouth arbitration that it is not technically feasible at present to separate and identify for billing purposes different classes of traffic carried on the same interconnection trunks. See Varner Aff. ¶ 48; Varner Reply Aff. ¶¶ 3-5 & Ex. AJV-1 (Sprint Arbitration Order) (Reply App., Tab 14). Sprint did not appeal this arbitration ruling. Varner Reply Aff. ¶ 3. Nor has Sprint presented additional evidence supporting its position to this Commission. On the contrary, Sprint concedes the fundamental technical point on which the Louisiana PSC relied. See Sprint Petn. at 16 (admitting that it is "an open question" as to how BellSouth "will be able to know which traffic should be charged interstate access charges").

Sprint's only argument is that some other state commissions have reached a different result. Sprint Petn. at 14-15. Sprint would like this Commission to respect only those state commission rulings with which Sprint agrees – regardless of the state commission's jurisdiction (or lack thereof). This ignores that the commission of the state that is the subject of a section 271 application has "knowledge of local conditions and experience in resolving factual disputes [that] affords them a unique ability" not available to other entities – including other state commissions. Michigan Order, 12 FCC Rcd at 20559 ¶ 30. Sprint is attempting to circumvent the Louisiana PSC by declining to appeal the PSC's decision on this issue, and then arguing that the Louisiana

PSC's conclusion should be ignored. Sprint Petn. at 14-15. Even if that were procedurally proper – which it is not – Sprint has failed to provide any "compelling evidence" that would give this Commission a basis to disagree with the conclusion of the Louisiana PSC. Order ¶ 79.[5]

IV. THE COMMISSION CORRECTLY ACKNOWLEDGED THAT IT LACKS AUTHORITY TO REGULATE INTRASTATE ACCESS CHARGES

AT&T also asks the Commission to reverse itself and override the Louisiana PSC on the issue of intrastate pricing. The Eighth Circuit has held that the Commission lacks authority to regulate intrastate access charges. See Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997) ("CompTel"). In light of this ruling, the Commission correctly noted that it is up to the states "to determine whether purchasers of unbundled local switching have the right to collect exchange access charges for intrastate exchange access calls."[6] AT&T does not assert its disagreement on this point is material to BellSouth's Application,[7] but simply uses its

[5] The Order did not, as Sprint contends, shift the ultimate burden of proof on this issue to Sprint. Sprint Petn. at 15. Rather, the Commission simply required that Sprint support its objections to the evidence of technical infeasiblity presented by BellSouth and ratified by the Louisiana PSC. Order ¶ 79; Michigan Order, 12 FCC Rcd at 20567-68 ¶ 44 (once a BOC has made a prima facie showing that it has satisfied the requirements of section 271, "opponents of the BOC's entry must, as a practical matter, produce evidence and arguments necessary to show that the application does not satisfy the requirements of section 271 or risk a ruling in the BOC's favor.").

[6] Order ¶ 230 n.736; Order, Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, 12 FCC Rcd 10175, 10180 ¶ 13 (1997) ("Access Charge Reform Order") ("we have not established any intrastate pricing regulations in the Access Reform Order.").

[7] See Varner Aff. ¶ 127 (CLECs using unbundled switching "may provide interstate and intrastate exchange access to customers for whom the carrier provides local service and collect the associated access charges. CLECs choosing unbundled switching are entitled to collect the associated switched access charges from interexchange carriers."); id. ¶ 116 (CLECs using shared transport "may provide interstate and intrastate exchange access to customers for whom the carrier provides local service and collect the associated access charges.").

reconsideration motion as an opportunity to attack the Eighth Circuit's holding. AT&T Petn. at 7-9.

In CompTel, the Eighth Circuit vacated the Commission's attempt to regulate access charges for intrastate calls, concluding that such regulation is "beyond the scope of the Commission's jurisdiction." CompTel, 117 F.3d at 1075 n.5. Indeed, while AT&T labors to explain why CompTel "is not controlling here," in the end it concedes that the Court of Appeals "vacated that part of Rule 51.515(a) that prohibited the imposition of intrastate access charges on the ground that it was beyond the scope of the Commission's jurisdiction." AT&T Petn. at 3-4.[8] Because regulation of intrastate access charges is an issue reserved for the states, the FCC cannot establish its own requirements as a condition of section 271 relief. Iowa Utils. Bd. v. FCC, 135 F.3d 535, 543 (8th Cir. 1998), petition for cert. pending, No. 97-2519 (filed Mar. 13, 1998) ("The Federal Communications commission is ordered to confine its pricing role under section 271(d)(3)(A) to determining whether applicant BOCs have complied with the pricing methodology and rules adopted by the state commissions and in effect in the respective states in which such BOCs seek to provide in-region, interLATA services.").

[8] According to AT&T, the Commission can ignore the plain holding of the Eighth Circuit, vacating "the Commission's attempt to regulate the temporary recovery of access charges for intrastate calls," CompTel, 117 F.3d at 1075 n.5, because the issue that AT&T raises is "the more fundamental issue of which carrier is the provider of service when a new entrant purchases an unbundled element." AT&T Petn. at 4. It is difficult to conceive of an issue that is more fundamental than jurisdiction. Nor is there any merit to AT&T's contention that if states have jurisdiction over intrastate access charges, this would nullify the Commission's ability to exercise its authority over interstate communication. This "impossibility" argument already has been considered and rejected by the Eighth Circuit. See Iowa Utils. Bd., 120 F.3d at 798 (holding that the "impossibility" exception "does not give the FCC the authority to dictate pricing regulations governing the local competition provisions of the Act."). "[T]elecommunication rate-making traditionally has been capable of being separated into its interstate and intrastate components," id., and, as the Court of Appeals concluded in CompTel, the collection of access charges is no exception. CompTel, 117 F.3d at 1075 n.5.

Having conceded that this issue is a state pricing issue, AT&T nevertheless launches into an explanation as to why it should be allowed to collect these access charges.[9] AT&T should direct these arguments to state commissions, as this Commission has held. Order ¶ 230 n.736. In the words of the Eighth Circuit, "the terms of the Act clearly indicate that Congress did not intend for the FCC to issue any pricing rules, let alone preempt state pricing rules regarding the local competition provisions of the Act." Iowa Utils. Bd., 120 F.3d at 798-99. While AT&T still refuses to accept this limitation, its refusal to do so provides no basis for the Commission to ignore binding authority.

V. THE COMMISSION CORRECTLY CONCLUDED THAT BELLSOUTH'S RESALE LIMITATIONS ARE REASONABLE AND NONDISCRIMINATORY

In its Order, the Commission rejected as "unpersuasive" the claims of AT&T and Sprint that BellSouth violates the competitive checklist's resale requirements by limiting resale of contract service arrangements ("CSAs") to similarly situated customers. Order ¶¶ 315-16. The Commission correctly concluded that this limitation "may be reasonable and non-discriminatory . . . because it is sufficiently narrowly tailored." Id. ¶ 316.

Sprint seeks reconsideration of this conclusion on two grounds. The first, a procedural argument, is essentially an attempt to continue an argument AT&T made in an unsuccessful

[9] AT&T's Petition also inaccurately suggests that an interexchange carrier's purchase of a UNE insulates the carrier from ever having to pay access charges – even when the interexchange carrier does not provide the interexchange access itself. See AT&T Petn. at 2 (stating that "any attempt by an incumbent LEC to impose access charges on carriers who are using unbundled network elements to provide intrastate or interstate telecommunications services would violate the Act."). However, it is beyond dispute that an interexchange carrier must pay access charges when another carrier provides it with interstate access service. See, e.g., Access Charge Reform Order, 12 FCC Rcd at 10179 ¶ 10.

Motion to Strike.[10] Sprint argues that the Order inappropriately relied on portions of BellSouth's Reply that were subject to AT&T's Motion. Sprint Petn. at 8-9. This contention is incorrect. In its Application, BellSouth addressed the issue of reselling CSAs, including resale to customers that are not similarly situated. See BellSouth Br. at 62; Varner Aff. ¶¶ 202, 202(1), 202(4); SGAT § XIV(C), (C)(3) (App. C, Tab 144); AT&T Agreement § 24.3 (App. C, Tab 200). Accordingly, the Commission was able to approve BellSouth's "similarly situated" limitation on resale of CSAs without relying on any Reply materials that were subject to AT&T's Motion to Strike. Order ¶ 368. The Commission's reliance on evidence that is not even subject to Sprint's procedural challenge disposes of Sprint's procedural argument.

Sprint's substantive argument has no more merit. According to Sprint, the question of being "similarly situated" is relevant only to CLECs, not to end users. Sprint Petn. at 11-12. The Commission rejected this argument as a general matter in its Local Interconnection Order, which recognized that restrictions relating to "reseller end users" may be appropriate.[11] In the recent Order, moreover, the Commission noted that "CSA offerings, by their nature, are priced to a specific set of customer needs," and that therefore "it is reasonable to assume that BellSouth's ability to offer a particular CSA at a given price will be dependent on certain end user characteristics." Order ¶ 316. Since CSAs are specifically tailored to particular customers – typically, as the Commission has observed, "high-volume" customers, id. ¶ 307, n.974 – the

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[10] Motion of AT&T Corp. to Strike Portions of BellSouth's Reply Evidence (filed Sept. 17, 1998) ("Motion to Strike"); see Order ¶¶ 367-68, 371 (denying motion).

[11] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15971 ¶ 952 (1996), modified on recon. 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert granted sub nom. AT&T v. Iowa Utils. Bd., 118 S. Ct. 879 (argued Oct. 13, 1998) ¶ 952 ("Local Interconnection Order"); see also id. ¶ 962 (cross-class selling).

characteristics of end-users are inseparable from pricing and other terms of CSAs. The Louisiana PSC has approved BellSouth's terms for resale of CSAs, and this decision is entitled to deference.[12] But in any event, this Commission renounced its own review of terms for resale of CSAs. The Commission indicated that in future filings it will consider "concrete" evidence of "unreasonable volume aggregation prohibitions." Order ¶ 317 (emphasis added). Such concrete evidence is conspicuously absent from Sprint's petition.

VI. THE COMMISSION CORRECTLY REJECTED APPEALS TO EXPAND THE REQUIREMENTS OF SECTION 272

A. The Commission Correctly Rejected Sprint's Proposed Expansion of Section 272(b)(3)

The Commission concluded that BellSouth's section 272 affiliate, BellSouth Long Distance, Inc. ("BSLD") complies with section 272(b)(3)'s requirement that a BOC's long distance affiliate "have separate officers, directors, and employees from the Bell operating company of which it is an affiliate." 47 U.S.C. § 272(b)(3). One of the litany of arguments that the Commission rejected in reaching this conclusion was Sprint's contention that because BSLD has only one director, it cannot satisfy the separation requirement of section 272(b)(3). Sprint Comments at 63. While Sprint conceded that BSLD's corporate structure is consistent with applicable state law, id., Sprint argued that a directorship that is in "minimal compliance" with state law is insufficient to meet the requirements of Section 272. Id. at 62.

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[12] See Order U-22252-B, Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Docket U-22252 (LPSC rel. July 1, 1998) (App. C, Tab 150); Local Interconnection Order, at 15971 ¶ 952 ("We conclude that the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions, which are more familiar with the particular business practices of their incumbent LECs and local market conditions.").

On reconsideration, Sprint claims that in objecting to a single director, it "was not advocating a requirement for a minimum number of directors." Sprint Petn. at 17. Yet this was precisely its argument. See, e.g., Sprint Comments at 63 (asserting that "one director structure reveals inappropriate laxity with regard to regulatory compliance"). Sprint further argues that what it calls a "formalistic adherence" to section 272(b)(3) "disserves underlying concerns and policies," Sprint Petn. at 20, and that therefore the Commission should exceed state law and section 272 and adopt a "more rather than fewer persons" standard for the separate corporate directors requirement of section 272(b)(3). Id. at 18-20. But as the Order held, "[n]either the statute nor our implementing regulations require a BOC to outline the reporting structure of its affiliate's Board of Directors, or establish a minimum number of Board members." Order ¶ 330 (emphasis added). In addition to lacking any statutory support, Sprint's vague standard would provide no clear guidance as to what is needed to comply with section 272(b)(3) – a result no doubt satisfactory to Sprint, which has no interest in seeing the development of a clear road map for section 271 compliance.

Sprint points to the Commission's Michigan Order as supposed support. Sprint Petn. at 20. In rejecting Ameritech's corporate structure for its section 272 affiliate, the Commission concluded that the section 272 affiliate did not have a separate board of directors from the BOC. Michigan Order, 12 FCC Rcd at 20731-32 ¶ 361. Moreover, the Commission was "not persuaded" by Ameritech's argument that its corporate structure complied with applicable state law. Id. 12 FCC Rcd 20730-32 ¶¶ 359-61. These critical facts are in sharp contrast to BSLD's corporate structure, which, as Sprint has conceded, complies with applicable state corporate law and contains a separate director for BSLD. Sprint Comments at 63. The Commission should again reject Sprint's argument for rewriting section 272.

B. The Commission Correctly Rejected AT&T's Proposed Expansion of Section 272(b)(5)

The Commission also correctly found that its "rules require only public disclosures of transactions between the BOC and its section 272 affiliate." Order ¶ 338. In doing so, the Commission rejected AT&T's broad call for the Commission to insist that BellSouth disclose the nature, timing, and subject matter of BSLD's transactions with BellSouth affiliates that are not BOCs, in order to demonstrate that BellSouth was not engaging in cross-subsidization. Id. n.1058 (citing AT&T's McFarland); AT&T's McFarland Aff. ¶ 27.

As part of its evidence that it will comply with section 272 when it receives interLATA approval, BellSouth disclosed that BellSouth Telecommunications, Inc. ("BST") – BellSouth's BOC – has not transferred to any affiliate any network facilities that are required to be unbundled pursuant to section 251(c)(3), nor has BSLD provided any service to a non-BST affiliate that "chains" to BST. Order n.1059 (citing BellSouth's Cochran Reply Aff. ¶ 11); Wentworth Reply Aff. ¶ 12 (Rep. App, Tab 15); see also Cochran Aff. ¶¶ 21, 26-27 (App. A, Tab 4) (all transactions conducted and reported in accordance with FCC rules). As the Commission has indicated, these representations address any concerns about cross-subsidization of BSLD through other BellSouth affiliates. See Michigan Order, 12 FCC Rcd at 20736-37 ¶ 373. Accordingly, there is no need for BellSouth to disclose transactions between BSLD and non-BOC affiliates. Such transactions are "the proper subject of the biennial audits, which require a thorough examination of all affiliate transactions in order to evaluate compliance with the statute and our rules." Order ¶ 338. AT&T's demand for additional disclosure is nothing more than an attempt to review BellSouth's confidential business plans and corporate arrangements under the guise of section 272.

VII. THE COMMISSION CORRECTLY CONCLUDED THAT A BOC MAY ENGAGE IN JOINT MARKETING DURING INBOUND CALLS

AT&T again asks this Commission to limit the ability of BOCs to engage in joint marketing, while conceding that the Commission has already rejected this argument in both the Order and the Commission's South Carolina Order. AT&T Petn. at 9-15. AT&T offers no new basis for reconsideration of this issue.

AT&T argues that BellSouth's intention to recommend BellSouth's long distance service at the outset of inbound calls for new service violates equal access requirements. Id. at 11-12. But as the Commission has previously pointed out, "the equal access obligations requiring BOCs to provide the names and telephone numbers of interexchange carriers in random order were written at a time when BOCs could not provide (and therefore could not market) long distance service." South Carolina Order, 13 FCC Rcd at 671 ¶ 238. This requirement therefore cannot be used to trump a BOC's right to engage in joint marketing during inbound calls, which Congress, fully aware of equal access requirements (see section 251(g)), granted in section 272(g).

AT&T believes that a BOC's joint marketing rights should be limited to "radio, television, print, and other mass media advertising, as well as outbound telemarketing and direct mail, to promote its long distance affiliate." AT&T Petn. at 14-15. Section 272(g) contains no such list of "approved" types of joint marketing, nor does it restrict the types of accurate information BST may provide about BSLD's services. See Order ¶ 358. The absence of limitations on inbound joint marketing in section 272(g) was deliberate and considered, for elsewhere in the 1996 Act Congress set out express restrictions on such marketing. See, e.g., 47 U.S.C.§ 274(c)(2)(A) (limiting BOCs to inbound telemarketing or referral services related to the provision of electronic publishing).

AT&T offers no new arguments to refute these fundamental points. As the Commission has stated, a BOC satisfies its equal access obligations if it "offer[s] to read, in random order, the names, and if requested, the telephone numbers of all available interexchange carriers." Order ¶ 358. BellSouth's joint marketing plan satisfies this equal access requirement. See id.; see also Varner Aff. ¶¶ 248-51.

CONCLUSION

The AT&T and Sprint petitions come from incumbent providers that have a multi-billion dollar interest in denying consumers a real choice of long distance carriers. Not surprisingly, therefore, the petitions seek to wipe out the progress that was made in the Order and add uncertainty and needless delay to the section 271 process. The petitions are just as unfounded as they are ill-motivated. They should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jonathan Rabkin, hereby certify that on this 25th day of November 1998, I caused copies of BellSouth's Opposition to Petitions of AT&T and Sprint for Reconsideration and Clarification to be served via first-class United States mail upon all parties on the attached service list, except those parties designated with an asterisk, who will be served by hand.

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